

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

JUNE 4, 2008

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **June 4, 2008** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 Wet Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

9 present, 3 absent. Commissioners Coleman, Mulcahy and Sorich.

PRAYER

Commissioners were led in prayer by Commissioner Frasz.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF MAY 21, 2008

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Minutes of the May 21, 2008 Regular Meeting of the Council of Commissioners.

ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 8 yeas and 1 nay and 3 absent that in accordance with the provisions of subsection 6 of Rule VI of the Rules of Business of the Council of Commissioners of the city and county of Butte-Silver Bow, State of Montana, the council hereby finds that an emergency condition exists which requires that the Council rules be suspended to allow Communication No. 08-424 to be added to the agenda of tonight's Regular Meeting of the Council. Commissioner Granger voted nay.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Chief Executive reported that we didn't prevail last week with our meeting with NRD council where we were asking them to consider a new process that Butte-Silver Bow had put together. They decided that they would send out what the NRD staff had put together so they are sending that out for public comment. He has been meeting with his staff to look at the option of having us send out our proposal for public comment anyway. It would probably go out to the same members of the public and have them take a look at what we put together and then we would gather that public comment for our own use.

He informed the council members that tomorrow the Butte Rescue Mission is making a presentation on a proposal for their new facility at 11:00 AM in the Council Chambers.

Friday night the Art Walk will be happening.

SECTION I

PRESENTATION COMMUNICATION NO. 08-374

Mike McCourt , Johnson Controls, requesting time on the June 4, 2008 agenda to present a power point of the benefits of energy performance contracting.

Mike McCourt, Accounting Executive of Johnson Controls, 305 High Road Parkway, Missoula, and Toquigny of Castlebrook CO. showed a slide presentation. There was a brief discussion and questions and answers. Commissioner Foley said he would like to see us explore an energy audit with Northwestern Energy which is at no cost to us before we consider another plan.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to refer Communication No. 08-374 to Bill Melvin and a committee that he will put together and report back to Council at a future date and place Communication No. 08-374 on file.

SECTION II

CONSENT AGENDA

- A.**
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT
 - 5. PERSONNEL COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any "friendly amendments" or segregations.

Commissioner O’Leary made a “Friendly Amendment” to Communication No. 08-35. The amount of the grant should be \$73,995.00. Also a “friendly amendment to Communication No. 08-421 should read “council consider an application for a golf course beer and wine license.

Commissioner Lee segregated Section XV of the Committee of the Whole Report, Communication No. 08-356.

Commissioner Moodry called for segregation 6, Communication No. 44, 08-422

It was then moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, 1 through 5 and Section B, items 1 through 45 of No. 44 and that portion of the Committee of the Whole report.

Segregation of Committee of the Whole Report

Communication No. 08-356 – from George Everett, Executive Director Mainstreet Uptown Butte, requesting Hard Rock Mining Trust Reserve Fund Economic Development funding for the National Folk Festival.

Commissioner Lee said last week he failed to introduce letters of support for the Mainstreet Uptown proposal for the \$225,000 from the Hard Rock Mining Trust Fund. He announced he had seven letters to introduce into the record from the following:

1. Cindy Farrar, Resodyne Properties, LLC.
2. Glen Bodish, Executive Director of BSB Arts Foundation.
3. Pat Cooney, KXL TV Station Manager
4. Andrea McCormick, Mainstreet Uptown Board President
5. Ellen Crain, Butte Archives
6. Joe Broudy, Wein’s Mens’ Store
7. Marilyn Polich, Copper King General Manager.

Commissioner Lee moved to introduce the letters into the record. Commissioner Moodry seconded the motion and it passed with a unanimous verbal vote.

Communication No. 08-442 –from Karen Byrnes, Community Development Director, requesting authority to amend contract between consolidated Butte-Silver Bow and HKM Engineering for engineering services associated with TIFID #2 wastewater collections and conveyance system project.

Commissioner Moodry said that the amendment to the contract seemed to be in order. As we were reviewing this there is \$93,000 chunk of money that is asking

to be amended within their current contract for services that have already been provided. That rose the question of did this council approve that money to be expended. Has it been expended? What did it go for and we do have a fairly specific breakdown from HKM that the work was done. So the question that I posed to the County attorney the work being done was not the problem. Was the budget authority there to allow this to happen ? He believes that more research needs to be done to determine a timeframe, if the work was authorized, where it fits into the contract that is already in place and where do we go with this from here. It was decided that this does need to be researched more.

It was then moved by Commissioner Moodry, seconded by Commissioner Sheehy and carried with a unanimous verbal vote to refer Communication No. 08-422 to the Finance and Budget Committee for further review.

Commissioner Lee asked Deputy County Attorney Joyce, if he should have made a motion on Communication 08-356 to approve the communication. She replied that would be appropriate.

He then moved that Communication No. 08-356 be approved and placed on file. The motion was seconded by Commissioner Moodry and carried with a unanimous verbal vote

SECTION III COMMUNICATIONS TO BE READ AND ACTED UPON

1. 08-393 Dan Dennehy, Assistant Public Works Director, requesting authorization for Chief Executive to execute change order for Pioneer Technical Services in the amount of \$88,850.00.

Dan Dennehy, Assistant Public Works Director, explained this is for the engineering services for the high service water tank construction. Butte-Silver engaged Pioneer Services for engineering design work of the high service water tank in late 2006. That scope of work was not to include any construction work . During the design work Butte-Silver Bow and Pioneer evaluated some options for building this tank on Butte-Silver Bow's property. When we were doing that we informed Pioneer that our property wasn't high enough in elevation that would give us proper pressure within our system. Our first change order was to engage Pioneer to evaluate solutions for that problem including re-siting the high service water tank or to look at a land swap with a private property owner to get the high service tank where it needed to be. Pioneer, with that change order collected survey information south of the existing tank and evaluated construction of the structure at that site in that area. Once we received the design work we needed to get some dirt work done. The second change we are asking for is combined in the scope and task that in the letter that Brad Archibald provided you was to do three tasks. One was to do the oversight on the construction work that we have to be completed by our group. The second task is construction oversight of the work to be

completed by the tank contractor. The third task was that the tank as built and certification of the process of this tank will be provided to the DEQ who requires certification and DEQ requires certification from the project engineer before a project can be placed in operation. So, Brad and Pioneer Technical will do that.

Commissioner O'Leary asked Brad Archibald, engineer and president of Pioneer Tech to address the council and he explained how DEQ has changed how they do things. Deputy County Attorney Joyce said it is difficult for me to determine whether or not this is really a change order based on changes of unit prices or it's really an amendment to the scope of the original contract. Mr. Archibald says there is no doubt in his mind that it is an amendment to the scope of the original contract and not a change order based on unit prices.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to request a legal opinion and a special meeting to deal with this and in the meantime refer this communication to the Committee of the Whole.

Emergency Communication No. 08-424

Steve J. Kambich, City Court Judge, requesting 6/4/08 agenda be amended to add a budget transfer request in the amount of \$1,049.00 for the purchase of office furniture.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to refer Communication No. 08-424 to the Finance and Budget Committee.

SECTION IV

ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

1. COUNCIL RESOLUTION NO. 08-39

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF "OLD MERCURY STREET: WEST OF OKLAHOMA STREET AND NORTH OF EAST MERCURY STREET AND A PORTION OF RAILROAD AVENUE ADJACENT TO BLOCK1 OF THE GWIN & DUCIES ADDITION WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN.

2. COUNCIL RESOLUTION NO. 08-40

A RESOLUTION APPROVING A 10 FOOT BY 80 FOOT GRANT OF EASEMENT TO NORTHWESTERN CORPORATION D/B/A NORTHWESTERN ENERGY, A DELAWARE CORPORATION, IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., DESCRIBED AS TRACT 3 AS SHOWN IN CERTIFICATE OF SURVEY NO. 767-A, UNOFFICIALLY DESCRIBED AS LOT 4 AND THE EAST TEN FEET OF LOT 5 IN BLOCK 2 OF THE ROCKER TOWNSITE ON THE WEBSTER LODGE (AN UNFILED PLAT) FOR THE LOCATION OF A CATHODIC PROTECTION SYSTEM AND NECESSARY APPURTENANCES; FINDING THE NECESSARY FACTS FOR THIS RESOLUTION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

3. COUNCIL RESOLUTION NO. 08-41

RESOLUTION RELATING TO \$4,500,000 GENERAL OBLIGATION BONDS, SERIES 2008; AWARDED THE SALE THEREOF AND APPROVING THE OFFICIAL STATEMENT RELATING THERETO

ADJOURN

There being no further business to come before the Council, it was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 8:55 PM.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER

